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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

NOTIFICATION DATE	DELIVERY MODE
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06/07/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/790,793	Applicant(s) CORNELIUSSON, HELENA	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-13 and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-13 and 15-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendments to the specification can not be entered since they do not comply with 37 CFR 1.121, see MPEP 714, II, B., i.e. “Where more than one paragraph is to replace a single original paragraph, the added paragraphs should be numbered using the number of the original paragraph for the first replacement paragraph, followed by increasing decimal numbers for the second and subsequent added paragraphs, e.g., original paragraph [0071] has been replaced with paragraphs [0071], [0071.1], and [0071.2].” (emphasis added), i.e. not followed by letters as provided by the amendment. Therefore see discussion infra.

Specification

Description

2. The disclosure is objected to because of the following informalities: 1) In paragraphs 20 and 21, the amended description of the points, i.e. “near the front edge”, should be --on the front edge-- to be consistent with the Figures. See Response to Arguments section infra. 2) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims, e.g. including the dependent claims, should be commensurate, see MPEP 608.01(d).

Appropriate correction is required.

Claim Language Interpretation

3. Since no terminology has been explicitly defined, such will be given its usual, *e.g.* dictionary, definition. It is further noted that the claims do not require the barrier be a separate component, i.e. can be monolithically formed with upper and lower cover sheets. It is also noted that the terminology “near” is considered relative absent claiming specific dimensions/distances. It is also noted that the elastic element of each barrier is still not required to be at or near the fold along its entire length just run between attachment points to the article and along the entire length of the fold in claims 1, and 3-19. See also discussion of claims 20-21 *infra*. It is also noted that claims 1 and 15 do not require the attachment points extend under the barrier. See also discussion *infra*.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 3-7, 11-13 and 15-21 under 35 U.S.C. 103(a) as being unpatentable over Suzuki ‘607 in view of Feist ‘985, and thereby, by incorporation, Lawson ‘278 and Robertson ‘364, alone, or, in the alternative, Suzuki ‘607, in view of Sageser ‘428 and Feist ‘985, and thereby, by incorporation, Lawson ‘278 and Robertson ‘364.

Claims 1, 3 and 11-12: See Figures 2-5 and Figures 7-8 (the last two Figures show alternative embodiments at the same cross -section as that of Figure 4), and the English abstract of ‘607, i.e. ‘607 teaches an absorbent article defining a longitudinal direction, a front portion adjacent 4b in the longitudinal direction, a rear portion adjacent 6, and a middle portion along

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III-III arranged between said portions and having an upper, liquid-permeable cover sheet 1, a lower, liquid-impermeable cover sheet 2, an absorption body 3 arranged between the cover sheets, and first and second side barriers 4 along respective longitudinal sides, each side barrier in turn comprising at least one longitudinal elastic element 5, the first and second side barriers, viewed from above, defining a shape which narrows in the direction towards said front portion so that the distance, in the transverse direction of the article, between the elastic elements, is greater in said rear portion than in said front portion, see Figure 2, and each side barrier is arranged such that it is secured in contact with the front portion, see Figure 5, and it defines a folded structure of substantially the same shaped cross section as shown in Figure 4 of the instant application, see Figure 5 again, or a Z-shape, i.e. in combination with the upper cover sheet, see Figures 2-3 and 5 (Note the shape in the front portion also lies between lines III and IV) and Figures 7-8, with a fold adjacent 10 or 12 directed towards the inside of said article. The side barriers are secured to the upper cover sheet so that respective first and second longitudinal lines of attachments/folds are defined, see Figures 3-5 adjacent 9 or 10 and 11 and Figures 7-8 adjacent 12. The elastic element in the side barriers, viewed from above, are secured to the rear portion outside their respective folds, see Figure 4 between 10 and 11 and similar locations in Figures 7-8. The elastic elements run at least partially in contact with their respective folds, see element 5 in Figure 5, with respect to the fold adjacent 10 and see element 5 in Figure 4 adjacent the fold adjacent 11. Finally the first and second side barriers by themselves constitute a combined side leakage protection and leg elastic for the article.

Each side barrier may be monolithically formed or not monolithically formed from the upper and lower cover sheets, see Figures 3-5 and also see Figures 7 and 8, especially Figure 7,

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which show other portions of the barrier including the entire barrier being not monolithically formed with the cover sheets.

The at least one elastic element of each side barrier is also positioned at or “near” the fold directed towards the inside of the article, see discussion *supra*, i.e. the elastic elements run at least partially in contact with their respective folds, see element 5 in Figure 5, with respect to the fold adjacent 10, i.e. at and/or “near”, and the Claim Language Interpretation section *supra*, i.e. the distance defined by the terminology “near” is considered relative, i.e. see element 5 in Figures.

Claim 1 also requires the at least one longitudinal elastic element of each side barrier also run between an attachment point “on a front portion” of the article and an attachment point “on a rear portion” of the article and “along the entire length” of the fold directed towards the inside of the article. It is the Examiner’s first position, see Claim Language Interpretation section *supra*, that the ‘607 reference teaches such structure since the attachment points are on front and rear edge portions and the elastic runs between such points along the fold extending between such points. In any case, i.e. the Examiner’s second position, even if ‘607 does not teach the elastic member running between front and rear terminal edges, ‘607 at the very least teaches the elastic element of each side barrier running between front and rear attachment points to the article along the length of the fold therebetween. See also ‘985 at, in addition to the discussion thereof *infra*, Figure 11, which is a section across line 11-11 of Figure 10, col. 30, lines 10-34, and thereby, by incorporation, ‘278 at col. 11, lines 6-10, and ‘985 at col. 31, lines 20-59, and col. 32, lines 20-23, and thereby, by incorporation, ‘364 at the paragraph bridging cols. 10-11 as well as the discussion thereof *infra*, and ‘428 at col. 10, lines 11-16 as well as the discussion thereof *infra*.

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To make the length of the elastic member of '607, e.g. at least the length of the crotch, the entire length of the fold, i.e. between attachment points, instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by '985, '364 and '428. In so doing, the prior art combination necessarily and inevitably teaches the elastic members as now claimed as best understood, see again the Claim Language Interpretation section and paragraph 2 *supra*.

Claim 1 further requires a rear barrier formed in said rear portion and attached to the article along the rear edge of the article, "cooperating" (defined by the dictionary as "to act or work with another or others: act together or in compliance") with the first and second side barriers to form a pocket which pocket extends to the rear edge and beyond the lines of attachment in the transverse direction which lines extend thereunder. While Suzuki '607 does not teach such a rear barrier, it does teach side barriers, i.e. suggests the desire for barriers/leakage prevention. However, see '985 at, e.g., the Figures, esp. Figures 3 and 10-11, esp. 1018 versus 78, "tacks" 1016 and 1014, and the entire disclosure, esp. col. 7, lines 11-48, col. 29, line 48-col. 32, line 50 (and thereby, by incorporation, Robertson '364 at, e.g., the Figures and col. 3, lines 9-33, the paragraph bridging cols. 4-5, note esp. "at least four points", "along a line", "along two lines(as is shown", and col. 13, line 52-col. 14, line 22 and paragraph bridging cols. 14-15, e.g. longitudinal and/or lateral extents of rear barrier and such, e.g. "beyond", with respect to side barriers, col. 12, line 23-col. 13, line 50, e.g. elastic film of laminate is an elastic element, and col. 17, line 45-col. 18, line 8) which teach a rear barrier formed in the rear portion and attached to the article along the rear edge of the article, "cooperating" with the first and second side barriers to form a pocket extending to the rear edge and beyond the lines of attachment in the transverse direction which lines extend thereunder as

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well as for taking up bodily excretions in the direction rearwards and includes an elastic element having attachment points which, viewed from above, at least extend outside rear attachment points of elastic elements in the side barriers such that a barrier is defined along both the longitudinal sides and rear side of the article. Therefore to employ a rear barrier such as, for example, taught by '985 and '364, by incorporation, on the '607 device would be obvious to one of ordinary in the art in view of the recognition that such a feature in combination with side barriers improves the ability of the article to prevent leakage and the desire suggested by '607. In so doing, the prior art combination teaches/suggests a rear barrier formed in the rear portion and attached to the article along the rear edge of the article, "cooperating" with the first and second side barriers to form a pocket as claimed and extending to the rear edge and beyond the lines of attachment in the transverse direction which lines extend thereunder as well as for taking up bodily excretions in the direction rearwards and includes an elastic element having attachment points which, viewed from above, at least extend outside rear attachment points of elastic elements in the side barriers such that a barrier is defined along both the longitudinal sides and rear side of the article. It is noted that the instant application discloses no criticality of pocket extending longitudinally beyond the lines of attachment.

Claims 4-6: These claims further require such rear barrier be intended for taking up bodily excretions in the direction rearwards along the article, include a further elastic element and such further elastic element and attachment points thereof, when viewed from above, at least extend outside attachment points on the rear portion of the article, see CLI, such that a barrier is defined along both the longitudinal sides and rear side of the article. While Suzuki '607 does not

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teach such a rear barrier, it does teach side barriers, i.e. suggests the desire for barriers/leakage prevention. However, see discussion of claim 1 supra, esp. Figure 11 of '985.

Claims 7 and 13: These claims require each side barrier include two elastic elements one extending outside the other as viewed in relation to a longitudinal axis of symmetry through the article and the elastic elements consisting of elastic threads. While '607 does not show such, it does show a single elastic strip. Furthermore, for example, the cited portions of '985 and thereby, '364 at col. 11, lines 41-62 and '278 at col. 11, lines 31-51 which teach the interchangeability of parallel elastic threads for a strip or film. Therefore to make the elastic strip of each side barrier of '607 two elastic threads instead would be obvious in view of the interchangeability as taught by '985 and, by incorporation therein, '364 and '278. In so doing the prior art teaches the structure of claims 7 and 13.

Claim 15: See the discussion of claims 1 and 4-6 supra.

Claims 16-17: See the discussion of the claims supra, esp. claim 1 as well as Figures 3 and 10-11 of '985 and Figure 3 of '364, by incorporation thereby, i.e. the pocket is provided beyond the absorption body in the longitudinal direction. These claims now require the entire pocket be provided beyond the absorption body in the longitudinal direction. However, see, e.g., '685 at col. 6, lines 50-59 and col. 32, lines 17-23 and thereby, by incorporation, '364 at col. 7, lines 23-42, col. 14, lines 13-32 and col. 15, lines 44-57. Therefore, and in light of the terminology "about" which allows some leeway from the specific range end points, it is the Examiner's first position that the prior art combination teaches/suggests the entire pocket be provided beyond the absorption body in the longitudinal direction with "sufficient specificity", see MPEP 2131.03, i.e. the longitudinal extent of the rear flap is smaller than that of the waist

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flap. In any case, i.e. the Examiner's second position, since the claimed ranges, i.e. the rear flap is less than the waist flap, "overlap or lie inside ranges disclosed by the prior art" or similarly, the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, a prima facie case of obviousness exists. In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); In re Woodruff, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990; In re Geisler, 116 F.3d 1465, 1469-71, 43 USPQ2d 1362, 1365-66 (Fed. Cir. 1997) or Titanium Metals Corp. of America v. Banner, 778 F.2d 775, 227 USPQ. 773 (Fed. Cir. 1985). See MPEP 2144.05.

Claims 18-19: These claims require the cooperation of the first and second side barriers with the rear barrier forms a side barrier of the pocket in the longitudinal direction of the article which side barrier is disposed beyond the first and second lines of attachment in the transverse direction of the article, see, e.g., the discussion of claim 1 supra, i.e.. "see '985 at, e.g., the Figures, esp. Figures 3 and 10-11, esp. 1018 versus 78, "tacks" 1016 and 1014, and the entire disclosure, esp. col. 7, lines 11-48, col. 29, line 48-col. 32, line 50 (and thereby, by incorporation, Robertson '364 at, e.g., the Figures and col. 3, lines 9-33, the paragraph bridging cols. 4-5, note esp. "at least four points", "along a line", "along two lines(as is shown", and col. 13, line 52-col. 14, line 22 and paragraph bridging cols. 14-15, e.g. longitudinal and/or lateral extents of rear barrier and such, e.g. "beyond", with respect to side barriers, col. 12, line 23-col. 13, line 50, e.g. elastic film of laminate is an elastic element, and col. 17, line 45-col. 18, line 8)" and note Figure 11 which shows a pocket/gap between 70/1018 and 78.

Claims 20-21: The at least one longitudinal elastic element of each side barrier is positioned at or near the fold along an entire length of the at least one longitudinal elastic

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element, see CLI and discussion of claim 1 supra, i.e. the elastic elements run at least partially in contact with their respective folds, see element 5 in Figure 5, with respect to the fold adjacent 10, i.e. “an entire length” of the element is at or “near the fold (Note the claim does not require “an entire length” be from end to end of the element nor claim the entirety of the length of the element does such). Alternatively, since the distance defined by the terminology “near” is considered relative, i.e. see element 5 in Figures, i.e. the length of the element from end to end is “near” the fold.

6. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki '607 in view of Sageser '428 and Feist '985, and thereby, by incorporation, Lawson '278 and Robertson '364.

Claims 8-10 require the distance between the elastic elements of the side barriers is at least two times greater at the said rear portion than at the front portion or the distance between the elastic elements of the side barriers is at least three times greater at the rear portion than at the front portion or the distance between parts of the elastic elements the side barriers nearest to the inside of the article or is within the range of 1 - 3 cm at said front portion, respectively. Note paragraphs 33-34 of the instant application. While the claimed distance as seen in Figures 3 and 5 is approximately two times greater and there is a space at the front portion the '607 reference does not explicitly teach the claimed distances. Also note again Suzuki '607 does teach side barriers, i.e. suggests the desire for barriers/leakage prevention. However, see '428 at col. 7, lines 18-42 and col. 7, line 66-col. 8, line 50, i.e. spacing apart of the edges, i.e. elastics, of inwardly folded front portions of side barriers a distance of -2.5 cm to 15 cm combined with outwardly folded or flipped out rear portions of side barriers provides a better fit to the contours

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of the wearers body which reduces leakage (Note that if the front edges as shown in Figure 1 were spaced about next to each other, i.e. 0 cm, the spacing in the rear would clearly be at least 3 times that in the front, as shown the spacing in the rear is about 2-3 times the spacing in the front.). Therefore, to employ the spacing as taught by Sageser '428, i.e. as claimed, on the '607 device, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such would provide improved fit with the body resulting leakage prevention and the desire suggested by '607.

Response to Arguments

7. Applicant's remarks have been carefully considered but are either deemed moot in that they have not been repeated or are deemed not persuasive for the reasons set forth supra, e.g. because such are narrower than the claim language and/or the teachings of the prior art and/or the prior art rejections. Specifically Section II of the remarks has been considered but such arguments do not set forth any specific claim language which is deemed to be interpreted inconsistently. Continuing, Applicant's remarks are narrower than the prior art teachings, i.e. not only '985 but also, e.g., '364 teaches the rear barrier can extend across the entire width and is attached at its width periphery, e.g. similar to 96 but adjacent 54, and at "at least" the corner points 110/adhesive "tacks"(see definitions provided on PTO-892) 1016, 1014, i.e. when it extends across, there is a pocket between the barrier, e.g., 78, and barriers, e.g., 62, e.g. adjacent/beneath lines 92 (note similarly with regard to between 70 and 1076 in Figure 11 of '985 and also Figure 3) which extends across the entire width between a surface of the side barriers, e.g. the surface adjacent the arrow from 60 in Figure 2 of '364, and rear barrier, e.g.

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surface adjacent the arrow from 78 in Figure 3 of '364, but outside the lines of attachment 98.

Note also Figure 3 of both '985 and '364 and discussion of claims 16-17 with regard to the extent of the pocket with regard to the rear edge/attachment along such edge of the diaper.

Regarding arguments with respect to paragraph 2., section 1) supra, which are substantially the same as those previously presented, see Figures and descriptions in paragraphs 20-21 as originally filed.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 16-17 and the addition of claims 18-21.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936.

The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

June 1, 2010